

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 40**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Al Park

**AN ACT**

**RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; INCREASING PENALTIES FOR CERTAIN DWI OFFENDERS; AMENDING A SECTION OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:**

**"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--**

**A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.**

**B. It is unlawful for a person who is under the influence of any drug to a degree that renders him incapable of**

underscored material = new  
[bracketed material] = delete

1 safely driving a vehicle to drive a vehicle within this state.

2 C. It is unlawful for a person who has an alcohol  
3 concentration of eight one hundredths or more in his blood or  
4 breath to drive a vehicle within this state.

5 D. Aggravated driving while under the influence of  
6 intoxicating liquor or drugs consists of a person who:

7 (1) has an alcohol concentration of sixteen  
8 one hundredths or more in his blood or breath while driving a  
9 vehicle within this state;

10 (2) has caused bodily injury to a human being  
11 as a result of the unlawful operation of a motor vehicle while  
12 driving under the influence of intoxicating liquor or drugs; or

13 (3) refused to submit to chemical testing, as  
14 provided for in the Implied Consent Act, and in the judgment of  
15 the court, based upon evidence of intoxication presented to the  
16 court, was under the influence of intoxicating liquor or drugs.

17 E. ~~Every~~ A person under first conviction pursuant  
18 to this section shall be punished, notwithstanding the  
19 provisions of Section 31-18-13 NMSA 1978, by imprisonment for  
20 not more than ninety days or by a fine of not more than five  
21 hundred dollars (\$500), or both; provided that if the sentence  
22 is suspended in whole or in part or deferred, the period of  
23 probation may extend beyond ninety days but shall not exceed  
24 one year. Upon a first conviction pursuant to this section, an  
25 offender may be sentenced to not less than forty-eight hours of

. 142157. 1

underscored material = new  
[bracketed material] = delete

1 community service or a fine of three hundred dollars (\$300).  
2 The offender shall be ordered by the court to participate in  
3 and complete a screening program described in Subsection [~~H~~] I  
4 of this section and to attend a driver rehabilitation program  
5 for alcohol or drugs, also known as a "DWI school", approved by  
6 the bureau and also may be required to participate in other  
7 rehabilitative services as the court shall determine to be  
8 necessary. In addition to those penalties, when an offender  
9 commits aggravated driving while under the influence of  
10 intoxicating liquor or drugs, the offender shall be sentenced  
11 to not less than forty-eight consecutive hours in jail. If an  
12 offender fails to complete, within a time specified by the  
13 court, any community service, screening program, treatment  
14 program or DWI school ordered by the court, the offender shall  
15 be sentenced to not less than an additional forty-eight  
16 consecutive hours in jail. Any jail sentence imposed pursuant  
17 to this subsection for failure to complete, within a time  
18 specified by the court, any community service, screening  
19 program, treatment program or DWI school ordered by the court  
20 or for aggravated driving while under the influence of  
21 intoxicating liquor or drugs shall not be suspended, deferred  
22 or taken under advisement. On a first conviction pursuant to  
23 this section, any time spent in jail for the offense prior to  
24 the conviction for that offense shall be credited to any term  
25 of imprisonment fixed by the court. A deferred sentence

. 142157. 1

underscored material = new  
[bracketed material] = delete

1 pursuant to this subsection shall be considered a first  
2 conviction for the purpose of determining subsequent  
3 convictions.

4 F. Except as provided in Subsection G of this  
5 section, a second or third conviction pursuant to this section  
6 shall be punished, notwithstanding the provisions of Section  
7 31-18-13 NMSA 1978, by imprisonment for not more than three  
8 hundred sixty-four days or by a fine of not more than one  
9 thousand dollars (\$1,000), or both; provided that if the  
10 sentence is suspended in whole or in part, the period of  
11 probation may extend beyond one year but shall not exceed five  
12 years. Notwithstanding any provision of law to the contrary  
13 for suspension or deferment of execution of a sentence:

14 (1) upon a second conviction, [~~each~~] an  
15 offender shall be sentenced to a jail term of not less than  
16 seventy-two consecutive hours, forty-eight hours of community  
17 service and a fine of five hundred dollars (\$500). In addition  
18 to those penalties, when an offender commits aggravated driving  
19 while under the influence of intoxicating liquor or drugs, the  
20 offender shall be sentenced to a jail term of not less than  
21 ninety-six consecutive hours. If an offender fails to  
22 complete, within a time specified by the court, any community  
23 service, screening program or treatment program ordered by the  
24 court, the offender shall be sentenced to not less than an  
25 additional seven consecutive days in jail. A penalty imposed

. 142157. 1

underscored material = new  
[bracketed material] = delete

1 pursuant to this paragraph shall not be suspended or deferred  
2 or taken under advisement; and

3 (2) upon a third conviction, an offender shall  
4 be sentenced to a jail term of not less than thirty consecutive  
5 days and a fine of seven hundred fifty dollars (\$750). In  
6 addition to those penalties, when an offender commits  
7 aggravated driving while under the influence of intoxicating  
8 liquor or drugs, the offender shall be sentenced to a jail term  
9 of not less than sixty consecutive days. If an offender fails  
10 to complete, within a time specified by the court, any  
11 screening program or treatment program ordered by the court,  
12 the offender shall be sentenced to not less than an additional  
13 sixty consecutive days in jail. A penalty imposed pursuant to  
14 this paragraph shall not be suspended or deferred or taken  
15 under advisement.

16 G. Upon a third conviction within three years  
17 pursuant to this section, an offender is guilty of a fourth  
18 degree felony, as provided in Section 31-18-15 NMSA 1978, and  
19 shall be sentenced to a jail term of not less than six months,  
20 which shall not be suspended, deferred or taken under  
21 advisement.

22 [~~G.~~] H. Upon a fourth or subsequent conviction  
23 pursuant to this section, an offender is guilty of a fourth  
24 degree felony, as provided in Section 31-18-15 NMSA 1978, and  
25 shall be sentenced to a jail term of not less than six months,

. 142157. 1

underscored material = new  
[bracketed material] = delete

1 which shall not be suspended or deferred or taken under  
2 advisement.

3 ~~[H-]~~ I. Upon any conviction pursuant to this  
4 section, an offender shall be required to participate in and  
5 complete, within a time specified by the court, an alcohol or  
6 drug abuse screening program and, if necessary, a treatment  
7 program approved by the court. The requirement imposed  
8 pursuant to this subsection shall not be suspended, deferred or  
9 taken under advisement.

10 ~~[I-]~~ J. Upon a first conviction for aggravated  
11 driving while under the influence of intoxicating liquor or  
12 drugs pursuant to the provisions of Subsection D of this  
13 section, as a condition of probation, an offender shall be  
14 required to have an ignition interlock device installed and  
15 operating for a period of one year on all motor vehicles driven  
16 by the offender, pursuant to rules adopted by the bureau.

17 Unless determined by the sentencing court to be indigent, the  
18 offender shall pay all costs associated with having an ignition  
19 interlock device installed on the appropriate motor vehicles.  
20 If an offender drives a motor vehicle that does not have an  
21 ignition interlock device installed on the motor vehicle, the  
22 offender may be in violation of the terms and conditions of his  
23 probation.

24 ~~[J-]~~ K. Upon a first conviction for driving while  
25 under the influence of intoxicating liquor or drugs pursuant to

underscored material = new  
[bracketed material] = delete

1 the provisions of Subsection A, B or C of this section, as a  
2 condition of probation, an offender may be required to have an  
3 ignition interlock device installed and operating for a period  
4 of one year on all motor vehicles driven by the offender,  
5 pursuant to rules adopted by the bureau. Unless determined by  
6 the sentencing court to be indigent, the offender shall pay all  
7 costs associated with having an ignition interlock device  
8 installed on the appropriate motor vehicles. If an offender  
9 drives a motor vehicle that does not have an ignition interlock  
10 device installed on the motor vehicle, the offender may be in  
11 violation of the terms and conditions of his probation.

12 ~~[K.]~~ L. Upon any subsequent conviction pursuant to  
13 this section, as a condition of probation, a subsequent  
14 offender shall be required to have an ignition interlock device  
15 installed and operating for a period of at least one year on  
16 all motor vehicles driven by the subsequent offender, pursuant  
17 to rules adopted by the bureau. Unless determined by the  
18 sentencing court to be indigent, the subsequent offender shall  
19 pay all costs associated with having an ignition interlock  
20 device installed on the appropriate motor vehicles. If a  
21 subsequent offender drives a motor vehicle that does not have  
22 an ignition interlock device installed on the motor vehicle,  
23 the subsequent offender may be in violation of the terms and  
24 conditions of his probation.

25 ~~[L.]~~ M. In the case of a first, second or third

. 142157. 1

underscored material = new  
[bracketed material] = delete

1 offense under this section, the magistrate ~~[court has]~~ courts  
2 have concurrent jurisdiction with district courts to try the  
3 offender.

4 N. In the case of a third offense within three  
5 years pursuant to Subsection G of this section, district courts  
6 have exclusive jurisdiction to try the offender.

7 ~~[M-]~~ O. A conviction pursuant to a municipal or  
8 county ordinance in New Mexico or a law of any other  
9 jurisdiction, territory or possession of the United States that  
10 is equivalent to New Mexico law for driving while under the  
11 influence of intoxicating liquor or drugs, and that prescribes  
12 penalties for driving while under the influence of intoxicating  
13 liquor or drugs, shall be deemed to be a conviction pursuant to  
14 this section for purposes of determining whether a conviction  
15 is a second or subsequent conviction.

16 ~~[N-]~~ P. In addition to any other fine or fee  
17 ~~[which]~~ that may be imposed pursuant to the conviction or other  
18 disposition of the offense under this section, the court may  
19 order the offender to pay the costs of any court-ordered  
20 screening and treatment programs.

21 ~~[O-]~~ Q. As used in this section:

22 (1) "bodily injury" means an injury to a  
23 person that is not likely to cause death or great bodily harm  
24 to the person, but does cause painful temporary disfigurement  
25 or temporary loss or impairment of the functions of any member

1 or organ of the person's body; and

2 (2) "conviction" means an adjudication of  
3 guilt and does not include imposition of a sentence."

4 Section 2. APPLICABILITY.--The provisions of this 2003  
5 act are applicable to persons convicted for driving while under  
6 the influence of intoxicating liquor or drugs, as provided in  
7 Section 66-8-102 NMSA 1978, on or after July 1, 2003.

8 Section 3. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2003.

10 - 9 -

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscored material = new  
[bracketed material] = delete